

Introduction to
University of Kentucky
College of Law



Suggestions
for a Short Lecture Course
preparatory to the Study
of Cases in the Subject
of Criminal Law

by
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*Prepared by Judge. To serve as text book. I kept them
 from when others suggested for them. in 1882.*

Introduction to the Study of Criminal Law

A crime is the commission of an act which the law forbids, or the failure to perform an act which the law commands to be done, but neither is a crime unless a punishment is prescribed for the violation. The mere making of a criminal law without fixing a punishment for its violation renders the law itself valueless, as criminal laws are made effective only by punishment. The punishment is enforced by the state, in a proceeding in its own name, styled thus: Commonwealth of Kentucky vs. John Doe. Some states in prosecuting crime use the name State or the name People instead of the name Commonwealth, depending upon the law of the state regulating same.

Crimes are prohibited and punished on the ground of public policy to prevent injury to the public, and not to redress injuries to individuals. The prosecution of the crime in this state must be in the name of the Commonwealth, as seen above, and it may be brought about by any citizen or class of citizens of the Commonwealth. If in the commission of the crime a personal injury has been done to an individual, such as wounding or any other kind of hurt, the

act will be punished as a crime, and the individual can also maintain a civil action against the criminal to recover damages for his personal injuries. Neither of the proceedings has any effect upon the other. The civil action may be settled by the injured person in any way he pleases, but the right to the criminal prosecution belongs to the state and cannot be settled by the individual.

HOW THE CRIMINAL LAW IS MADE

The criminal law consists both of statutes or express enactments of the lawmaking power of the state, and of the common law or unwritten law.

The Common Law. What is known as the English Common Law had its origin about the eighth century, when what was known as the British Islands (now England) was taken away from the Roman powers and repopled by different tribes of Goths, Vandals, Angles, Picts, etc. These tribes ignored the laws of Rome and proceeded to establish laws of their own, made up of particular customs, general customs and a few particular laws which were acceptable to the united tribes. This code of laws was called the English common law, or the unwritten law. For a history of these laws it is advisable to read the introductory parts of Blackstone's Commentaries on the Laws of England, or some other good book on this subject.

When America was discovered the English colonists brought with them the English common law, with some English statute laws and made them the foundation laws upon which to build future laws for the government of the colonies. As America grew and became a nation made up of various states, each state with one exception (that of Louisiana) continued as their foundation laws the same body of laws, together with some few laws made by the colonies in the same way the English Common Law was made. The colonial laws are known as the American Common Law, but the latter laws are few. As each state progressed in its organization and growth, it made, through its own legislature, such laws, called statute laws, as seemed suited to its own welfare. Whenever a statute law was made, it abrogated or set aside such of the common laws as were in conflict with it. By this process of making laws through legislative enactment, the greater part of the common law has been set aside in each state. Whenever any part of the criminal law found in the common law system has not been removed by statute, that part is still in use and retained in our general system of criminal laws. The common law definitions of the various crimes are used except in such as are otherwise defined by statutes. It is seen, therefore, that crime

is punished under statute laws if such is found to cover the case; if not we go back and punish under the common law.

Each state acts independently of all others in the punishment of crimes committed within her borders. No one state will punish the crimes committed in another state, and renders no service except to capture and return the criminal for punishment to the state where the crime was committed.

No act can be punished as a crime under a law enacted after the act itself was committed. As to such an act the law would be ex post facto and unconstitutional.

No state can punish a crime committed in violation of a Federal law, but all power over crimes not delegated to congress under the Federal Constitution are retained by the respective states.

The common law has no force or effect in the Federal courts, for the reason that all power and authority of such courts are obtained under statutes prescribed by congress.

CLASSIFICATION OF CRIMES.

Crimes as classified under the common law were divided into three classes: Treason, Felonies and Misdemeanors. Under the statute laws of the various states, and the construction of the common law by court decisions, no substantial changes have been made in this classification.

Treason. In this country treason can consist only in levying war against the United States, or a particular state, or in adhering to their enemies, giving them aid and comfort.

Felonies and Misdemeanors. Under the common law felonies were such crimes as were punishable with death and forfeiture of lands and goods, and many crimes that are now treated lightly were under that law made felonies. The statutes of the various states throughout the United States have made a new definition for felonies, and such crimes are now defined as those which are punishable with death or by confinement in the state prison. All crimes less than felonies are misdemeanors. One charged with having committed a felony (may, by the decision of the court or jury, be subjected to a less punishment than that of confinement in the state prison, and still the charge stands as a felony. It is the charge made against the defendant that determines whether or not in name it is a felony or misdemeanor.

In many cases where two or more crimes seem to have been committed in the same transaction, the smaller may be merged into the greater and constitute only one crime. Such as: assault and battery, shooting and wounding and killing, if all take place in

the same altercation. Breaking into a dwelling house, entering same and stealing within the same, and many others of a similar kind. Under the common law there was no such thing as merger of crimes, but it has been made so in this country by statute laws.

MENTAL ELEMENT IN CRIME.

In any act that constitutes a crime there must be two elements; the act itself and a criminal intent. The intent may be expressed or implied. A legal act may be done in such a way as to constitute a crime. Criminal intent may be implied from carelessness or disregard for the rights of others, and the act done becomes punishable. Motive is not an essential element in crime, but it may show whether or not the act was willful or with criminal intent. A good motive will not prevent an act otherwise punishable from being a crime. If one commits a criminal act which his conscience suggests to him is wrong (*malum in se*) he is of course punishable, but he may commit a crime which does not appear to him wrong, but if the law fixes a punishment for the act (*malum prohibitum*) he is punishable. Ignorance of law excuses no one.

To make an act a crime the two essential elements, the act and the intent, must concur. Or in other words the intent must exist at the time the act is done.

INCAPACITY TO COMMIT CRIMES.

As heretofore shown, the mental element or criminal intent must be present either expressed or implied, in order to make an act a crime; and there are some persons and organizations incapable of entertaining such intent.

Infants. Under the common law, infants under the age of seven years are considered incapable of committing crime. From the age of seven to fourteen they are presumed to be incapable, but that presumption may be removed by proof of sufficient mind to know the effect and consequences of the act. Over the age of fourteen they are presumed to have sufficient capacity to commit crime, and to avoid punishment after reaching that age there must appear affirmatively a lack of capacity. This rule is adapted in most all of our states as declaratory of the common law, or by special statutes.

Insane Persons and Lunatics. Insane persons and idiots are incapable of committing a crime because of the inability to entertain a criminal intent.

The usual test as to the condition of mind that would make one who is supposed insane or an idiot responsible for his criminal acts, is determined by ascertaining whether or not the accused person is able

to judge between right and wrong, or to understand the effect and consequences of crime.

An insane person may have lucid intervals when the criminal intent could be entertained, and if a crime is committed by him during such period, he would be guilty. There are many kinds of insanity as explained by the medical profession, exempting one from responsibility; but there are many kinds of abnormal mental conditions not classed as insanity, which do not exempt one from punishment.

Irresistible impulse is a species of insanity that does not exempt one from responsibility except in a few states. Moral and emotional insanity, as distinguished from mental, do not exempt one from responsibility.

The burden of proof is upon the accused to show the lack of mental capacity to be made exempt from responsibility. No one can be tried legally for crime while insane.

Drunkenness. Voluntary drunkenness furnishes no grounds of exemption from criminal responsibility except when the mind is made diseased by delirium tremens resulting from drunkenness. It may be an excuse in such cases as require specific intent, and it may be material in cases where the question of provocation is important. Involuntary drunkenness may be made an excuse for crime.

Corporations. A corporation may be criminally liable for omission to perform a duty imposed upon it by law, and for certain acts of misfeasance, for maintaining a nuisance, &s. It cannot be guilty of perjury nor, as a general rule crimes involving malice or evil intention, but may be punished for contempt of court.

Many statutes are made fixing specific punishments.

Acts That Are Not Crimes. Enumerated under this head are such acts as are justifiable under public authority, under parental authority, in prevention of crime, in suppression of riot in defense of person or property, in making an arrest or preventing an escape, acts under duress, coercion or necessity; also such acts committed under certain kinds of provocation.

PARTIES CONCERNED IN THE COMMISSION OF CRIMES.

Joining in Criminal Act. Where several persons join in the execution of a common criminal purpose, each is criminally liable for every act done in the execution of that purpose. With the establishment of this as a fundamental principle, when two or more persons are connected with the commission of a crime some are designated as follows: Principals and Accessories. Principals in the first degree. Principals

in the second degree. Accessories before the fact. Accessories after the fact. Aiders and abettors. Principals liable for acts of agent. Agents liable for their own acts, &c.

THE OVERT ACTS, ATTEMPTS, SOLICITATIONS AND CONSPIRACY.

In many cases it is a crime to attempt to do an act made criminal by law although the attempt fails. Intent to commit a crime is never punishable unless at least an attempt has been made.

At common law it is a crime to solicit another to commit a felony or any other aggravated offense, although the person solicited refuses. The laws of some states are to the contrary.

Conspiracy is a combination of two or more persons to do an unlawful act, whether that act be the final object of the combination or only means to the final end, and whether that act be a crime or an act hurtful to the public, a class of persons, or an individual. The punishment for this crime is in most states fixed by statute. In such cases each conspirator is responsible for the acts of his associates in the furtherance of the common purpose.

CRIMES, HOW PROSECUTED.

When any one has committed a crime, he may in some cases be arrested by an of-

ficers or by a private citizen without a warrant of arrest, but generally such a warrant must be issued by a proper officer and placed in the hands of an arresting officer for execution before the arrest can be made. When arrested, the accused will be taken before a court for examination, and held for final trial to the proper court, if not dismissed. A grand jury may proceed by indictment to find a charge against one accused of crimes without a warrant of arrest having been previously issued. When an indictment is found, a bench warrant will be issued for the arrest of the accused. Any citizen of the state may, upon proper showing, cause a warrant of arrest to be issued, or cause an indictment to be found.

OFFENSES AGAINST THE PERSON.

Homicide is the killing of a human being by a human being, and to be punished it must be criminal, and the death from the injury must follow within a year and a day after the act was committed. The injury done may not be the whole cause of the death, and still be punishable. Homicide is classified as justifiable, excusable, and felonious. Felonious homicide is the killing of a human being without justification or excuse, and may be either murder or manslaughter. Other crimes under this

classification are mayhem, rape, assault and battery, false imprisonment, kidnapping and abduction.

Justifiable Homicide. A homicide is termed justifiable when the person committing it is not in fault, but kills in strict performance of a legal duty.

Excusable Homicide. A homicide is excusable when the person committing it is to some degree in fault, but the circumstances are such that he does not deserve punishment. It also includes killing by accident or in self-defense.

Felonious Homicide or Murder. This crime is committed by killing another person with malice aforethought. The killing must be intended or grievous bodily harm intended. Such intention may be expressed or implied. Malice does not necessarily mean hatred or personal ill-will toward the person killed. The killing may be the consequence arising from some other felony, from recklessness, indifference to consequences, or the killing of one person in an attempt to kill another; and in either case the person causing the death is guilty of what the law deems malice aforethought. In other words, it is a state of mind that is dictated by a wicked, depraved, and malignant heart, not necessarily from premed-

itated personal hatred or revenge. Murder is punishable by death or confinement in the state prison for life.

Manslaughter. Is unlawful homicide without malice aforethought, and is either voluntary or involuntary. Voluntary manslaughter is where the act causing death is committed in the heat of sudden passion, caused by provocation which is deemed adequate to excite uncontrollable passion in the mind of a reasonable person, and the act must not be sought or induced as an excuse for the killing. Involuntary manslaughter is homicide unintentionally caused; which may be in doing an unlawful act not amounting to a felony, nor likely to endanger life, or by culpable negligence in performing a lawful act, or in performing an act required by law.

In some states murder and manslaughter have been divided into degrees. In order to understand the way in which these crimes are divided in different states, it will be necessary to consult the statutes of such states.

Mayhem. At common law mayhem is a hurt of any part of a man's body whereby he is rendered less able in fighting, either to defend himself or annoy his adversary. By statute it is extended so as to cover injuries merely disfiguring. Mayhem is a felony in some states and a misdemeanor only in others.

Rape. Is the act of a man having unlawful carnal knowledge of a woman without her conscious, free, and voluntary permission.

Assault and Battery. Assault is an attempt or offer, with force and violence, to do a corporal hurt to another, and is a common assault where there are no aggravating circumstances if there are aggravating circumstances, it is termed an aggravated assault. A battery is an assault whereby any force, however slight, is actually applied to the person of another directly or indirectly.

False Imprisonment. Is any unlawful restraint of a person's liberty, and is a misdemeanor at common law, but in many states made a felony by statute.

Kidnapping. Is false imprisonment aggravated by conveying, and in some states by a mere intent to convey the person imprisoned to another place.

Abduction. Is the taking of a female without her consent or without the consent of her parents or guardian, for the purpose of marriage or prostitution.

OFFENSES AGAINST THE HABITATION.

Arson. Is the malicious burning of the dwelling house of another as defined by the common law, but by statute in some states it includes the burning of other buildings.

Burglary. At common law burglary is the breaking and entering of the dwelling house of another, or a house within the curtilage, in the night-time, with intent to commit a felony.

OFFENSES AGAINST PROPERTY.

Larceny. Which is the taking and removing by trespass of personal property which the trespasser knows to belong either generally or specially to another, with the felonious intent to deprive him permanently of his ownership therein. Larceny is divided into two kinds; grand larceny, which consists in the stealing of personal property up to a certain amount in value, and is a felony. Petit larceny, which is the stealing of personal property less than the amount in value fixed in grand larceny, and is a misdemeanor. Statutes are made in some cases making them felonies or misdemeanors without regard to the amount involved.

Embezzlement. There was no such crime as this under the common law, but has been made so by statute in the various states. This crime is defined as the unlawful appropriation of property to his own use by a servant, clerk, trustee, public officer, or other person who had obtained the property in a lawful way and afterward appropriated the same to his own use with a felonious intent. This crime is a felony.

Obtaining Property by False Pretenses.

This crime was unknown to the common law, but by statute is made a crime and consists in knowingly and designedly obtaining the property of another by false pretense with intent to defraud. The pretense must be based upon existing facts or circumstances, and not upon opinion or a promise. The owner must believe the false pretenses and be thus induced to part with his property; this crime is generally a felony.

Robbery. Is an aggravated form of larceny and is defined as the taking of the personal property of another with the intent to steal from his person or in his presence and against his will, by violence, intimidation or putting in fear. This crime is a felony.

Receiving Stolen Goods. This crime consists in the receiving of stolen goods known to be stolen goods at the time of the receiving, and must be taken into actual or constructive possession with the consent of the person from whom they are received. The receiver must have felonious intent. This crime is variously punished according to the statute of the respective states.

Forgery. This crime is the fraudulent making or alteration of a writing to the prejudice of another person's rights; and the making or alteration must be false with intent to defraud; the writing must be of

legal efficacy to impose a liability, or in case of alteration to change a liability. The alteration must be material. Forgery was a misdemeanor by the common law, but is generally a felony by statute.

Uttering Forged Instrument. To utter a forged instrument is to offer it directly or indirectly by words or actions, as good with a knowledge of its falsity and with intent to defraud. This was a misdemeanor at common law, but is generally a felony by statute.

OFFENSE AGAINST PUBLIC HEALTH, SAFETY, COMFORT AND MORALS.

Nuisance. A common or public nuisance is a condition of things which is prejudicial to the health, comfort, safety, property, sense of decency or morals of the citizens at large, or a community resulting either from an act not warranted by law or from the neglect of a duty imposed by law. This crime is a misdemeanor.

Bigamy or Polygamy. This is a statutory and not a common law crime. It is committed by one who being legally married, marries another person during the life of his or her wife or husband, as the case may be.

Adultery. Is a statutory crime and is the voluntary sexual intercourse between a married person and another not his or her

spouse. In some states both are punished, in others only those who are married.

Fornication. This crime is voluntary unlawful sexual intercourse under circumstances not constituting adultery.

Incest. This crime is the illicit sexual intercourse between persons who are related within the degrees of consanguinity or affinity wherein marriage is prohibited by law. Marriage between such persons is no defense.

Miscegenation. This crime is the intermarriage between the white and negro races, or the living together as such.

Sodomy, Bestiality and Buggery. These three crimes are used interchangeably by the various states in describing the crime which consists of carnal copulation against the order of nature with man, woman or beast.

Seduction. Is generally defined as the act of a man in enticing a woman of previous chaste character by means of persuasion to have sexual intercourse with him.

Abortion. To procure an abortion is to cause a woman to miscarry or to procure a premature delivery of a child.

OFFENSES AGAINST PUBLIC JUSTICE AND AUTHORITY.

Each of the following is a crime at common law, some of which are modified more or less by statute.

Barratry. This offense is the act of frequently exciting and stirring up law suits and quarrels either at law or otherwise.

Maintenance. Is the officious intermeddling in a law suit that in no way belongs to one, by maintaining or assisting either party with money or otherwise, to prosecute or defend it.

Champerty. Is a bargain with the plaintiff or defendant to divide the land or other matter sued for between them if they prevail at law, whereupon the champertor is to carry on the parties' law suit at his own expense.

Obstructing Justice. Is the act of obstructing public or private justice, as by resisting or obstructing an officer in the exercise of his duty, or preventing attendance of witnesses, and the like.

Embracery. Is an attempt to influence the jury corruptly to one side by promises, persuasions, entreaties, money, entertainments and the like.

Escape. Is the act of an officer or other person having lawful custody of a prisoner, whereby he voluntarily or negligently allows the prisoner to depart from such custody otherwise than in due course of law. Or the act of a prisoner who voluntarily departs from lawful custody without breach of prison.

Prison Breach. Is the breaking and going out of his place of confinement by a prisoner who is lawfully imprisoned.

Rescue. Is the forcible delivery of a prisoner from lawful custody by one who knows that he (prisoner) is in custody.

Misprision of Felony. Is the criminal neglect either to prevent a felony from being committed, or to bring to justice the offender after its commission.

Compounding Crime. Is committed where one who, knowing that a crime has been committed, agrees not to prosecute it.

Perjury. Is the willful and corrupt giving, upon a lawful oath, or in any form allowed by law to be substituted for an oath, in a judicial proceeding or course of justice, false testimony, material to the issue or matter of inquiry.

Subornation of Perjury. Is the procuring of another to commit perjury.

Bribery. Is receiving any undue reward by a judge or other officer connected with the administration of justice, to influence his behavior in office. In many states it is defined to be the giving or receiving of a reward to influence any official act, whether judicial officer or not.

Malfeasance. Is the act of any public officer in the exercise of, or under the color of exercising the duties of his office, to do

any illegal act, or abuse any discretionary power with which he is invested by law, from an improper motive.

Nonfeasance. Is the willful neglect of any public officer to perform any duty which he is bound to perform by law, provided the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter.

OFFENSES AGAINST THE PUBLIC PEACE.

Any willful and unjustifiable disturbance of the public peace, if it is of sufficient magnitude for the law's notice, and does not amount to a felony, is punishable as a misdemeanor.

Dueling. Is the challenging another to fight a duel, or to be the bearer of such a challenge, or to provoke another to send such a challenge.

Unlawful Assembly, - Rout and Riot. An unlawful assembly is an assembly of three or more persons, with intent to commit a crime by open force, with intent to carry out any common purpose, lawful or unlawful, in such manner as to give firm and courageous persons reasonable grounds to apprehend a breach of the peace. A rout is such an unlawful assembly which has made a motion toward the execution of the common purpose of the persons assembled. A

riot is such an assembly which has actually begun to execute the purpose for which it assembled, by a breach of the peace, and to the terror of the people, although they had not that purpose when they assembled.

Affray. Is the fighting of two or more persons in a public place, to the terror of the people.

Forcible Entry and Detainer. Under the common law, forcible entry is a crime, and punishable where a person violently enters upon real property occupied by another, with menaces, force and arms, and without the authority of law. Forcible detainer is the detention of the possession of the property by the same kind of force, and may be where the original entry was forcible or where it was peaceable.

Libel. The books differ in defining libel, but criminal libel may be defined generally as the malicious publication of any writing, sign, picture, effigy or other representation tending to expose any person to hatred, contempt or ridicule. The word "libel" is used to denote both the defamatory matter published and the offense of publishing it.

OFFENSES AGAINST THE GOVERNMENT

Treason. Consists only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort. This is defined in the Constitution of the United States. A similar provision is

any illegal act, or abuse any discretionary power with which he is invested by law, from an improper motive.

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found in the Constitution and statutes of each of the states defining treason against the state. If no such provision should be found in the Constitution or statutes of a state, the common law would apply.

Misprision of Treason. Every one owing allegiance, and having knowledge of treason against the United States, or under state laws, against the state, is guilty of misprision of treason if he conceals it and does not as soon as may be, disclose and make known the same.

Other crimes in this classification are offenses against the post office, also the abuse of the elective franchise, and many others.

OFFENSES AGAINST THE LAW OF NATIONS.

Piracy. Is robbery or forcible depredation on the high seas, without lawful authority, and done animo furandi, and in the spirit and intention of universal hostility. It is the same offense at sea as robbery on land.

Many other crimes are provided against by international agreement.

JURISDICTION.

In order to fix the jurisdiction over the various crimes, territorial limits are necessarily observed, and jurisdiction is determined by locality of offenses. This is true as to the United States as a nation, each state and the counties therein.

FORMER JEOPARDY.

No one can be put twice in jeopardy for the same offense. But anyone may waive the right to plead former jeopardy.

CONCLUSION.

It must be understood that the crimes set out under these various classifications are not all the crimes that are punishable under the laws of the various states.

This list includes in the main such as are set out under the common law, and those generally included under the criminal laws of the various states. But as each state can provide for its own list of crimes and provide punishment for each according to the will of its lawmaking bodies, it will be found that some of this general list of crimes have been changed in some states as far as both definitions and punishments are concerned. Also it will be found that a great many other acts not found herein are made crimes to suit the conditions and viewpoints of the different states. It would hardly be possible to find any two states with the same list of crimes. Those outside this general classification are usually of minor importance.

A good understanding of what is set out in this pamphlet will prepare the student well for the study of the cases in the subject of Criminal Law.